

# ICPS newsletter®

## The system of checks and balances: Before and after political reform

*The “Public Consultations and Awareness Campaign on Political Reform in Ukraine” project, being implemented by ICPS and the Center for Ukrainian Reform Education (CURE) with financial support from the Westminster Foundation for Democracy (WFD), is summing up preliminary results. Over the first quarter of 2007, public consultations were held in five cities: Lutsk, Dnipropetrovsk, Simferopol, Mykolayiv, and Chernivtsi. Recently, two booklets were published: “Political Reform as Seen by the Public” and “Political Reform as Seen by the Government”*

Ukraine’s 1996 Constitution gave the President the greatest powers and the least accountability compared with other government bodies. The political reform should have increased both the accountability and responsibility of the government to voters and, in such a manner, have brought Ukraine closer to European standards. A Law amending the Constitution was adopted on 8 December 2004 and came into force in 2006. Instead of optimizing the system of checks and balances, however, this political reform complicated relations among and within the various branches of government.

A review of reform, such as it was

### ***The role of the President***

Before the 2004 reforms, the President was able to appoint and dismiss the majority of top government officials and was de facto the Head of Government, holding the majority of political powers that normally would go to a Premier. By not signing into law the bills adopted by the Verkhovna Rada, the President could actually block the adoption of any law. At the same time, the President took no responsibility for actions of the Government.

After the Constitutional reforms, the right to form a Government was largely transferred to the Verkhovna Rada. A close political relationship was established between the legislature and the Cabinet: the Rada majority now had to form

a coalition, which, in turn, formed a Government. Thus, the Government became the main executive body. The President continued to be the guarantor of the Constitution and to be responsible for foreign and security policy.

### ***The Verkhovna Rada majority***

Before the reform, the Constitution did not require that there be a standing majority in the legislature. And indeed, the Rada often operated on the basis of a strictly situational majority.

Since 2006, the Verkhovna Rada is obligated to establish a majority that forms the Government, supports its activity and is responsible for its actions. If such a majority is not set up within 30 days, the President has the right to dissolve the legislature.

### ***Appointing and dismissing the Premier***

Before, the Premier was appointed by the President, for which the President needed the rubber stamp of a Verkhovna Rada majority. The Premier could also be dismissed at any time by the President, which happened with great frequency, or by the Verkhovna Rada—but only if it failed to approve that Government’s yearly Program. In practice, the President was the main figure making or breaking the Premier.

Now, the Verkhovna Rada must establish a coalition of factions that nominates a candidate for Premier and submits this nomination to the President. The

President must return this nomination to the Verkhovna Rada for final approval within 15 days. Only the Verkhovna Rada can dismiss the Premier. The President can now only submit a proposal to the Verkhovna Rada calling for the Premier to be dismissed.

### ***Appointing and dismissing the Government***

Previously, the President appointed and dismissed ministers at suggestion of the Premier. However, because the Head of Government himself could always be dismissed by the President, these nominations were largely a formality.

Now, the Premier proposes appointments and dismissals that are approved by the Verkhovna Rada coalition. There are two exceptions: the Minister of Foreign Affairs and the Minister of Defense, whose nominations are submitted to the Verkhovna Rada by the President.

### ***Appointing and dismissing other top officials***

Before, the President appointed and dismissed governors of local state administrations and the majority of top officials of central government bodies at the request of the Premier. But this was frequently a mere formality. To appoint and dismiss Chairs of the Anti-Monopoly Committee, State Property Fund and State Radio and Television Committee, the President needed the consent of the Verkhovna Rada.

The procedure for appointing and dismissing governors of local state administrations has not changed: the President does this at the request of the Cabinet. But the Chairs of the Anti-Monopoly Committee, State Property Fund and State Radio and Television Committee are appointed by the Verkhovna Rada at the request of the Premier.

### ***The President's right to cancel resolutions by other government bodies***

Previously, the President could cancel resolutions issued by the Cabinet or by the Crimean Council of Ministers. The President could also veto bills adopted by the Verkhovna Rada. In fact, the President frequently did not sign into law those bills whose veto the Verkhovna Rada had even overridden—which made these laws null and void.

Now, the President can only suspend the enactment of a Cabinet resolution, if he thinks it is unconstitutional. Moreover, the President must simultaneously submit the specific resolution to the Constitutional Court for a ruling. The President can still overrule resolutions issued by the Crimean Council of Ministers.

The President can also veto bills adopted by the Verkhovna Rada. However, if the President refuses to sign into law a bill whose veto has been overturned by a two-thirds vote, that bill can be signed and published by the Verkhovna Rada Speaker instead.

### ***Dissolving the Verkhovna Rada***

Before, the President had no specific power to dissolve the Verkhovna Rada.

Now, the President has the right to dissolve the Verkhovna Rada, if a coalition has not been set up within 30 days or if a new Cabinet has not been formed within 60 days of the dismissal of the previous Government.

### **Original idea of reform stillborn**

The initiators of political reform had as their main objective expanding powers of the Verkhovna Rada and the Cabinet by shifting Presidential powers. They took as their example the model of a "parliamentary" republic, where the Government is formed by the legislature, while the President plays a secondary role and is actually appointed by the legislature.

However, fierce political competition prevented that initial plan from being implemented. The President has remained a strong political figure: the Head of State is still elected through a national election and has considerable power over both the Cabinet and the Verkhovna Rada.

The model of government that Ukraine has as a result of political reform in 2004 does not resemble most of its European counterparts. It has more in common

with a fairly eccentric "semi-presidential" model. Among developed European democracies, only France has established somewhat similar relations among the Government, the President and the legislature.

The main reasons why political reform failed include:

- 1) **Lack of institutions that guarantee democratic rights and freedoms in Ukraine.** The government machine is used as an administrative resource in political competition, the Constitution Court has proved ineffective, the judicial system does offer proper justice, the rights of the opposition are not enshrined in law, the organization of political parties fails to meet democratic standards, and the instruments for civil society to influence government exist only on paper.
- 2) **Flawed legislation.** The amended Constitution still has many holes that various political players have begun to interpret to their own liking.
- 3) **Undemocratic, untransparent political parties.** The elimination of the majority system has hidden the human face of individual elected representatives behind a party brand. In voting for a party list, voters essentially choose a "black box" and after an election are soon disappointed with their own choice. The personal responsibility of every elected official to a specific electorate has disappeared. Moreover, young, innovative candidates stand little chance against the old political horses who are inevitably first on party lists.
- 4) **Lack of party identity.** In Ukraine, there are no party ideologies that are based on European values and reflect the ideological and political attitudes of a specific part of the population. Slogans like "This party represents the entire nation" are just a tactic to get elected.

### **Government decisions should not be made in a vacuum**

The hastily adopted Constitutional amendments showed themselves for what they were the minute the President and Premier represented different political camps. Yet, in a parliamentary-presidential system, the President and Premier are forced to cooperate, even to cohabitate, when the President and Government

### ***By the way...***

As part of the "Developing Capacity among Regional NGOs for Policy Analysis at the Local Level" project, a public discussion on "The current state of European integration, transborder cooperation and its impact on socio-economic development of the Bukovyna region" took place in Chernivtsi on 23 April. Participants included representatives of executive bodies and local governments, independent experts and stakeholders. This project is being implemented by ICPS jointly with the Razumkov Center for Economic and Political Studies, with funding from the International Renaissance Foundation.

As part of the "Socio-Economic Performance and Potential Analysis Capacity" (SEPPAC) project, another series of seminars is taking place. Over 24–27 April 2007, participants from the Ministry of Economy, the Ministry of Finance and the National Bank of Ukraine discussed the long-term fiscal forecast and chapters of a future analytical report. The goal of this project, which is being funded by the Canadian International Development Agency (CIDA), is to introduce mathematical mechanisms for evaluating both Ukraine's economic potential and the socio-economic impact of realizing this potential.

represent political forces that are in opposition to each other.

In short, Ukraine's political forces should begin now to work on fixing the Constitution of Ukraine in order to establish an effective system of checks and balances. Moreover, decision-making should not be in isolation from voters. Procedures for holding public consultations both at the national and at the local levels need to be entrenched in law. ■

*The goal of the "Public Consultations and Awareness Campaign on Political Reform in Ukraine" project is to increase the role of public consultations in government decision-making and to more broadly familiarize Ukrainian society, including government officials, with various aspects of political reform in Ukraine and how it might be implemented openly, involving public input.*

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